

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 197 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy No :
of the judgement?
 4. Whether this case involves a substantial question No :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? No :

GOHARALI HUSENALI JALALI

Versus

JOHRABEN D/O.MUSABHAI KALUBHAI

Appearance:

MR AM BUKHARI for Petitioner

MR SC SHAH for MR.SN SHELAT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act against the concurrent judgment and Decrees of the trial Court as well as the Appellate Court.

2. List was revised thrice at different intervals from 11.00 to 3.30 p.m. but at no time anybody appeared from the side of the revisionist. This being a Revision Shri S.C.Shah for Shri S.N.Shelat, representing the respondent has been heard and the Judgments of the Courts below have also been examined.

3. Brief facts are that the plaintiff - respondent filed Suit for eviction of the defendant revisionist from the disputed accommodation which was let out to him on monthly rent of Rs.6/-. Eviction was sought on four grounds, namely, the revisionist was in arrears of rent for more than six months. Secondly he was causing nuisance in the Suit accommodation. Thirdly he raised permanent structure in the suit accommodation and lastly he acquired suitable alternative accommodation.

4. The Suit was resisted by the revisionist denying all these allegations and pleaded that the rate of rent was Rs.5/- p.m. and that the land lady was not accepting the rent regularly with malafide intention to seek eviction of the revisionist.

5. The trial Court after considering the evidence on record decreed the Suit for eviction and recovery of arrears of rent.

6. The revisionist filed Appeal wherein only one ground was pressed regarding findings of the trial Court on acquisition of suitable alternative accommodation by the revisionist. No other point was pressed before the Appellate Court. The Appellate Court after examining the evidence on record found that the revisionist had acquired suitable alternative accommodation, hence the decree for eviction passed by the trial Court under Section 13(1)(1) of the Rent Act was confirmed.

7. It is a case where the two Courts have recorded concurrent findings after properly appreciating the oral and documentary evidence on record that the revisionist has acquired suitable alternative accommodation. This finding is not vitiated by any error of law nor it can be said to be perverse. The Appellate Court has taken into consideration the extract of Assessment Register Ex.39, indicating that there is vast ancestral property consisting of three houses bearing Nos.1857 to 1859 with huge open land in the area known as "Shakpith" in the town Dhandhuka. Open compound may not be material for the purposwe of Section 13(1)(1) of the Act, but there is categorical findings recorded by the trial Court that

after the demise of the father of the revisionist two houses came in the share of the revisionist. It is also a finding of the trial Court that one house was allotted to the son of the defendant. That house may not be relevant for the purpose of determining whether the tenant revisionist has or has not acquired suitable residential accommodation for his purpose.

8. Usmanbhai Nathubhai, on behalf of the plaintiff stated that the two houses have fallen in the share of the defendant in the ancestral property and the defendant used the same and that the defendant mostly stayed in the ancestral property. Another witness of the plaintiff Umarbhai Musabhai has also stated to the same effect. The lower Appellate Court considering the extent of accommodation and family members of the revisionist concluded that the alternative accommodation fallen in the share of the revisionist was sufficient for his purpose. The lower Appellate Court was conscious of the fact that mere acquisition of alternative accommodation is not sufficient ground for passing decree for eviction rather it should be established that the alternative accommodation was sufficient accommodation to meet the needs of the tenant. After considering this aspect the lower Appellate Court found that the alternative accommodation, namely, two houses in the ancestral property were sufficient to meet with the requirement of the revisionist. Consequently findings of the lower Appellate Court does not suffer from any manifest error of law or misreading of evidence.

9. The revision is hereby dismissed with no order as to costs.

sd/-

Date : 16.6.2000 (D. C. Srivastava, J.)

sas